

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**New Covenant Full Gospel Baptist Church,**  
Petitioner-Appellant,

v.

**Muscatine County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 10-70-0234**  
**Parcel No. MCMUU 0835434013**  
**Docket No. 10-70-0235**  
**Parcel No. MCMUU 0835434015**  
**Docket No. 10-70-0236**  
**Parcel No. MCMUU 0835434001**

On September 14, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board ("PAAB"). The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, New Covenant Full Gospel Baptist Church ("New Covenant"), was represented by Pastor Howard Hughes ("Hughes"). The Muscatine County Board of Review ("Board of Review") designated County Attorney Alan Ostergren as its legal representative and submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

New Covenant appeals from the Board of Review decision denying applications for exemption on three parcels of property in Muscatine, Iowa. According to the property record card at the time of the protest, the subject properties consist of one vacant lot and two improved parcels, 517 and 519 Walnut Street.

The first parcel (Docket No. 10-70-0234) is a 0.085 acre unimproved vacant lot adjacent to the other two parcels. It is described as a gravel parking lot on the property record card.

The second parcel, 517 Walnut Street, (Docket No. 10-70-0235) is a 0.043 acre site improved by a 1560 square-foot base, two-story, brick and frame apartment building. The building has six units and was built in 1963. According to the property record card, the improvements have a quality grade of 4-10, 75% physical depreciation, and 50% functional obsolescence.

The third parcel, 519 Walnut Street (Docket No. 10-70-0236), is a 0.085 acre site improved by a 3068 square-foot base, one-story, brick church built in 1900. According the property record card, the church has 75% physical depreciation, 40% functional obsolescence, 60% economic obsolescence, and is in very poor condition.

The real estate was classified as commercial for the January 1, 2010, assessment and valued as follows:

Docket No.	Parcel No.	Address	Land AV	Improvements AV	Total AV
10-70-0234	MCMUU 0835434013	Vacant Lot	\$ 4,690	Unimproved	\$ 4,690
10-70-0235	MCMUU 0835434015	517 Walnut Street	\$ 3,870	\$ 14,700	\$ 18,640
10-70-0236	MCMUU 0835434001	519 Walnut Street	\$ 8,630	\$ 27,440	\$ 36,070

All three parcels previously qualified for exempt status under Iowa Code Chapter 427. The apartment building was posted as a public nuisance in 1999 and has remained empty since that time. The exempt status of both buildings was removed in 2006. The church exemption was later reinstated for 2006 and 2007. The church building was posted as a public nuisance in 2008 and the Board of Review again removed its exemption. New Covenant did not apply for an exemption for 2009.

New Covenant reapplied to Muscatine County Assessor Dale McCrea for tax exemption in January 2010. The Board of Review denied the applications. The record indicates appointments were set in February and May 2010 for an interior inspection of the building by the City of Muscatine and the County Assessor. However, Hughes did not show for the inspection. Hughes testified he did not show up for an interior inspection because he believed the city's concerns were with the exterior of the

building. On March 31, 2010, Notices to Abate Nuisance were sent to New Covenant by City Planning, Zoning and Public Safety for both structures. The Notices do not indicate what repairs were needed. The City further notified the attorney for New Covenant that public assembly was prohibited at the buildings until it was repaired, inspected and an occupancy permit was issued. New Covenant appealed the nuisance designation to the City Council, which upheld the Building Department and rejected the appeal at its May 6, 2010 meeting. Hughes testified the minutes from that meeting are incomplete. Hughes asserted the City Council discussed the Notices to Abate Nuisance and determined the notices were not legally posted. Meeting minutes are not verbatim transcripts of the proceeding<sup>1</sup> and there is nothing in the minutes that would indicate the Notices to Abate Nuisance were invalidated at the May 6 meeting. If the Muscatine City Attorney had determined at some point, either at or after the city council meeting, that the postings were illegal, it is reasonable to assume the city would have acted on that advice. New Covenant did not present any evidence to show or suggest that the church property was erroneously posted.

Also on May 6, 2010, the Board of Review considered the exemption applications filed by New Covenant. It denied the application for exemptions and notified New Covenant by letter dated May 11, 2010. A second letter was sent by Assessor McCrea in June explaining the decision to deny the exemptions. Neither letter informed New Covenant of its appeal rights. Assessor McCrea testified at hearing that he verbally informed Hughes of the option of appealing to this Board or filing in district court.

New Covenant then appealed the Board of Review decision to this Board on the ground that the property is not assessable, is exempt from taxes, or is misclassified under Iowa Code section 441.37(1)(c). There were no exhibits in the certified record or submitted at hearing in support of its

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<sup>1</sup> Iowa Code section 21.3 lists the requirements for public meeting minutes.

appeal. At hearing, this Board requested New Covenant provide copies of several church bulletins demonstrating religious use of the properties throughout the calendar year 2009.

Hughes testified on behalf of New Covenant. He reported the church has been actively operating for twenty-two years. Hughes testified that worship services were held at the church throughout 2009 despite the posting, because New Covenant challenged the validity of the posting order based on legal advice. He reported the apartment building was used for storage. Co-Pastor Carol Hughes testified three services are held weekly; Sunday worship, Thursday night Bible study, and Saturday prayer service.

The properties were sold at tax sale and in August 2011 they were deeded to the new owner. Subsequently, Muscatine police prohibited New Covenant from entry into the church at the request of the new owners and threatened them with arrest if they entered the premises. Hughes testified that services were discontinued at that time.

Assessor Dale McCrea testified on behalf of the Board of Review that the church was declared an unsafe nuisance by Ken Rogers of Muscatine Planning, Zoning, and Public Safety in 2010. New Covenant was notified at that time the property could not be occupied. McCrea stated he doubted the property was used for any religious purpose since it was unlawful to use it at the time. He said the 110-year old church has deteriorated over the years and disrepair is evident from exterior observation. McCrea's office was notified by the City of Muscatine of the Notices to Abate, the posting, and the City Council decision denying New Covenant's appeal. McCrea testified that it was routine practice for his office to get information from cities in his assessing jurisdiction on such things as building permits, demolitions, and postings. His office is treating the improved sites as vacant buildings for assessment purposes.

Since the Board of Review determined New Covenant should be granted an exemption in past years, we accept its finding that the Church qualifies as a religious organization. There was no

evidence in the record that New Covenant operates for pecuniary profit. Therefore, we focus on the actual use of the property.

There is persuasive evidence in the record to indicate the two structures could not be used by New Covenant for public assembly in late 2009 and in 2010. While religious property may qualify for exemption under section 427.1(8) while being renovated or repaired, there is little to suggest that is the case for the subject property. Little evidence was provided to show that meaningful repairs were made to the church during 2009 and 2010. Hughes testified he made some repairs to the building in 2010, including brick work and covering windows so birds did not fly through the building. There was also little evidence to show New Covenant was open to resolving the nuisance postings. New Covenant did not accommodate inspection requests by the Assessor and city officials because Hughes felt the city's concerns were with the church's exterior. Hughes did not feel that officials needed to go inside the structure to inspect, yet he testified that he invited city officials to come to church services. An interior inspection could have shown repairs and, if appropriate, an occupancy permit could then have been issued. Given the length of time this property has been in very poor condition, and given the limited renovation or repair work done we conclude the properties were not "under construction" as contemplated by section 427.1(9). *See also, Des Moines Coalition for the Homeless v. Des Moines City Board of Review*, 493 N.W.2d 860 (Iowa 1992).

Like the church property, the apartment building was posted and could not be used for church purposes. Other than for incidental storage, there was no evidence presented to show the apartment building (517 Walnut) was used for church purposes. There was also no evidence regarding the use of the vacant adjacent lot.

Based on the limited record, and given the following legal framework for property tax exemptions, we cannot find the properties were lawfully used for a religious purpose for the January 1, 2010, assessment.

Reviewing the record as a whole, we find the preponderance of the evidence did not prove that the subject property should be granted an exemption as of January 1, 2010.

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a); 427.1(8). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

New Covenant asserts its properties are exempt from tax under Iowa Code Chapter 427. Its request for exemption is based on Iowa Code section 427.1(8), which reads as follows.

The following classes of property shall not be taxed:

8. Property of religious, literary and charitable societies. All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit.

The Court recognizes three requirements for exemption under section 427.1(8): First, the property must be used by a charitable, religious, or educational institution or society; second, the property must not be used with view to pecuniary profit; and third, the actual use of the property must be solely for the appropriate objects of the institution or society. *Camp Foster YMCA v. Dickinson County Bd. of Review*, 503 N.W.2d 409, 411 (Iowa 1993) (citing *Congregation B'Nai Jeshurun v. Bd. of Review*, 301 N.W.2d 755, 756 (Iowa 1981)).

The burden is on one claiming the exemption to show the property falls within the exemption statute. *Wisconsin Evangelical Lutheran Synod v. Regis*, 197 N.W.2d 355, 356 (Iowa 1972). The provisions of Iowa Code Chapter 427 are strictly construed by the courts and any doubt about an exemption is resolved in favor of taxation. *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000); *Care Initiatives v. Bd. of Review of Union County*, 500 N.W.2d 14, 16-17 (Iowa 1993).

Regarding the first factor, because the Board of Review granted an exemption to New Covenant in the past, it necessarily found New Covenant was a religious institution at the time it claimed exempt status and eliminates the need for this Board to determine whether New Covenant qualified as a religious organization. *Carroll Area Child Care Center*, 613 N.W.2d at 255; *Aerie 1287, Fraternal Order of Eagles v. Holland*, 226 N.W.2d 22, 25 (Iowa 1975).

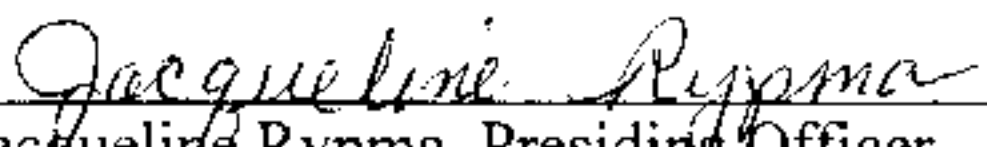
With respect to the second factor, there was no evidence in the record that the property was used for pecuniary profit.

Applying the third consideration, the Board of Review denied exemption for 2010 because the city had determined the building was not safe to occupy. We find the Board of Review's decision denying exemption was reasonable given the restrictions on the property. The record indicates the church property was posted as a public nuisance in April 2008 and the exemption was denied. New Covenant did not apply for an exemption in 2009. The property was again posted in March 2010. New Covenant reapplied for and was again denied an exemption in 2010. Hughes was able to access the property to make improvements but the church building could not be occupied or used for any other public or private purpose. There was limited evidence presented to show the property was "under construction" and limited evidence of any efforts at bringing the property into compliance with applicable building and housing codes.

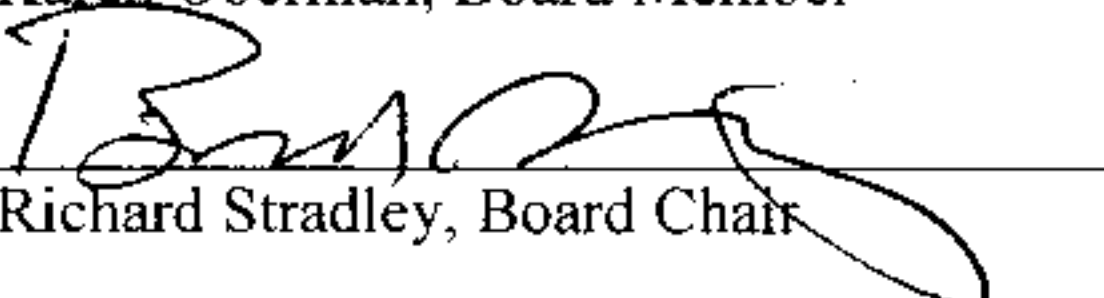
In the end, it was New Covenant's burden to show that the subject properties qualified for property tax exemption under Iowa Code Chapter 427. Any doubt regarding exemption is resolved in favor of taxation. *Carroll Area Child Care Center*, 613 N.W.2d at 254. Therefore, we affirm denial of the religious exemption to New Covenant as determined by the Board of Review.

THE APPEAL BOARD ORDERS that the January 1, 2010, assessment as determined by the Muscatine County Board of Review is affirmed.

Dated this 9 day of November 2011.

  
Jacqueline Rypma, Presiding Officer

  
Karen Oberman, Board Member

  
Richard Stradley, Board Chair



Copies to:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-9</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>Alan Ostergren</i></u>